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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,395	08/27/2003	Alexander G. Lastovich	P-5370	6084

26253 7590 05/16/2007
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EXAMINER

STIGELL, THEODORE J

ART UNIT	PAPER NUMBER
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3763

MAIL DATE	DELIVERY MODE
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05/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary

Application No.

10/649,395

Applicant(s)

LASTOVICH ET AL.

Examiner

Theodore J. Stigell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,7,8 and 26-40 is/are pending in the application.
- 4a) Of the above claim(s) 26-31 and 36-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,7,8,32-35,39 and 40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Election/Restrictions

Newly submitted claims 26-31 and 36-38 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The claims listed above are directed to Figures 8 and 10 and not directed to the elected Species B (Figures 7a-7e).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 26-31 and 36-38 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 7-8, 32-35, and 39-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Morrison (2,542,828). Morrison discloses an abrader device comprising a base (12) having a top surface and a bottom surface onto which an abrader surface (23) is mounted with frustoconical microprotrusions (25) with at least one scraping edge, a handle (10) projecting from the top surface of the device, and a spring (27) operably

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engaged between the handle and the base, wherein movement of the handle causes proportional compression of the spring for controlling the amount of force applied to the skin, further comprising a housing (12) surrounding the base, wherein the handle is a push button that collapses inside the base when activated and the base rotates with respect to the housing, wherein the microprotrusions are about 5 to 250 microns, further comprising a detent (26), wherein the abrader can be removably attached or permanently adhered to the base, and further comprising a retraction spring (17).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-2, 7-8, 32-35, and 39-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guye (2,688,970) in view of Sage et al. (6,835,184). Guye discloses a abrader device comprising all of the limitations recited in claim 1. Guye does not disclose that the microprotrusions (2) have a frustoconical shape as is recited in the

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independent claim. Sage discloses a microprotrusion device that includes frustonically shaped microprotrusions and teaches that this configuration is useful in abrading the skin. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the microprotrusions of Guye with the frustoconical shape of Sage to make a more effective vaccinator system.

Claims 1-2, 7-8, 32-35, and 39-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jang (5,843,114) in view of Sage et al. (6,835,184). Jang discloses a abrader device comprising all of the limitations recited in claim 1. Jang does not disclose that the microprotrusions (301) have a frustoconical shape as is recited in the independent claim. Sage discloses a microprotrusion device that includes frustonically shaped microprotrusions and teaches that this configuration is useful in abrading the skin. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the microprotrusions of Jang with the frustoconical shape of Sage to make a more effective vaccinator system.

Response to Arguments

Applicant's arguments with respect to claims 1-2, 7-8, and 26-40 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theodore J. Stigell whose telephone number is 571-272-8759. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Theodore J. Stigell


ANH TUAN T. NGUYEN
SUPERVISORY PATENT EXAMINER

5/14/07